110-304 to 386

110-305

# IN THE
# SUPREME COURT
## OF THE
# UNITED STATES.

**OCTOBER TERM, A. D. 1883.**

**No. 1136.**

**ERROR TO THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS.**

**Copy of such Parts of the Record as is necessary for consideration of Motion to dismiss Writ and affirm Judgment.**

Richard Butler, Public Printer, Clinton, Illinois.

38 March 5, 1883. "This day came the parties by their attorneys, and also the jury impannelled and sworn herein, who for verdict say: "We, the jury, find the issue for the plaintiff, and assess his damage to the sum of Five Thousand, Two Hundred and Thirty-seven Dollars and Fifteen Cents.

It is therefore ordered and adjudged by the court that the plaintiff recover of the defendant the said sum of five thousand two hundred and thirty-seven dollars and fifteen cents, his damages aforesaid assessed by the jury, together with the sum of three hundred and sixty-four dollars and sixty-five cents, his costs and charges by him about his suit in this behalf expended, and that execution issue therefor."

. . . . . .

40 March 14, 1883. "By agreement of the parties by their counsel, it is ordered by the court that the defendant have leave to withdraw the amount brought into court without prejudice."

. . . . . .

42 "And now, on this 21st day of June, 1883, come again the parties by their counsel and submit to the court the motion heretofore entered by the defendant for a new trial, and the court having heard and considered the allegations, and being sufficiently advised in the premises, doth overrule said motion.

"And now on this 5th day of July, 1883, comes the defendant by its counsel, and on its motion a writ of error to the supreme court is allowed, on its entering into bond to the plaintiff in the penalty of ten thousand dollars, with Charles Ridgely as security, conditioned as the law directs, within sixty days from this date, and that on the filing of such bond the execution be recalled. Defendant to file bill of exceptions by first day of September next."

43 Bill of exceptions filed July 18, 1883.

"Be it remembered that on the 26th day of February, A. D. 1883, in this term of this court, the defendant tendered to
44 the plaintiff, in open court, in full of the amount due the plaintiff on account of the damages claimed in his declaration, in said cause, the sum of seven hundred twenty-seven and 42-100 dollars ($727.42), and the plaintiff, then and there, refused to accept the same in full satisfaction of his said cause of action, whereupon the defendant deposited said sum of money here in court, as a tender of the full amount due the plaintiff on account of the damages claimed in his declaration herein.

The defendant then withdrew all its pleas except the general issue, and it was agreed, by counsel of both plaintiff and defendant, that all matters which might be properly pleaded or replied should be admitted in evidence under the general issue."

. . . . . .

. Deposition of John F. Knox, the defendant in error:

48 "I gave the agent of the Central Pacific Railway Co. in San Francisco a claim for the invoice cost of the wool, which he forwarded to the agent of the Wabash, St. Louis and Pacific Railway Co., requesting a settlement for damages done
49 to the wool; the agent of the last named Co. answered, saying that they had sold the wool for $1,281.09, with an expense
50 on same of $563.67, leaving a balance of $727 42 subject to my order; also, that they could do nothing further in the matter. Then I commenced this suit."

CLAIM 3862.

WABASH, ST. LOUIS & PACIFIC RY. CO.,
GEN'L FR'T OFFICE.

ST. LOUIS, July 9th, 1881.

277 J. C. STUBBS, ESQ., G. F. A. C. P. Ry. Co.

*Dear Sir*---Enclosed herewith I return papers in above

claim, and beg to call your attention to following facts regarding same :

This consignment arrived at Co Blfs Dec. 24th, & at Toledo Jan. 3d, 1881, having been 20 days in transit between San Francisco & C. B., and ten days from that point to Toledo, (having been detained at St. Louis two days, owing to needed repairs to be done to car.)

278 Consignment was *routed* via this and *L. S. & M. S. Rys* and was *transferred* at Co Bluffs into a *L. S. & M. S. Ry.* car and was taken into Toledo in same car, and would have been delivered to L. S. & M. S. Ry. Co. on the 3d or 4th of Jan., if that company would have received it. It was billed through from St. Louis to Boston via H. T. Line, one of the Lake Shore and N. Y. Cent. Lines.

This company was holding the wool up to and at time of the flood of Feb. 11, because the L. S & M. S. Ry. Co. declined to receive any but perishable freight and live stock from us.

The wool was dirty and had manure mixed with it, and after getting wet began to heat and smell badly.

Connecting line still declining to receive it, and owner refusing to give instructions as to its disposal, this company, in order to secure itself from loss, was compelled to have it opened, dried and re-baled, and sent to Boston and sold. The amount realized from sale, after deducting charges from Toledo, and commission for selling, was $1281.09. This company advanced at C Bluffs chgs to that point $362.42. Chgs from that point to Toledo were $77.93, and expenses at that point for caring for the wool were $113.32. Total, $553.67.

We are therefore holding $727.42, subject to the order of
279 the owner.

We hold that this company fully fulfilled all the obligations of a common carrier, and denies any and all liability for damage done to this consignment by cause of delay, or, any

cause whatever, and must respectfully decline the claim. We regret exceedingly that such a mishap occurred, but can pursue no other course, and hope that shippers, when they come to understand all the facts, will coincide with us.

Yours truly,

(Signed) M. KNIGHT, G. F. A.

In the Circuit Court of the United States for the Southern District of Illinois.

January Term, A. D. 1882.

JOHN F. KNOX
vs.
W. St. L & P. Ry. } Assumpsit.

It is stipulated betwixt the parties that on the 9th day of July, 1881, M. Knight was the general freight agent of the defendant; that the letter hereto attached is a true copy of a a letter written on that day by said M. Knight to one J. C.
280 Stubbs, and that for the purposes of this case the copy may be regarded as the original, and may be given in evidence on the trial of this cause if the original letter would be admissable, it not being admitted that either is admissable.

WM. BROWN,
Attorney for Defendant.
MOORE & WARNER,
Attorneys for Plaintiff.

Charles Knox, claim agent of the plaintiff in error, testified:

A. "That is what I was trying to answer --I was trying to tell of the process I took in getting the wool off of my hands. Went to Mr. Loose to find out who was a good party to consign the wool to. He recommended to send to a certain party. Had correspondence with a certain party. Wrote that the railroad company were going to send him some wool for sale. Got his advice and under it got some sacking, and myself, and the agent, and all hands made fifty

odd bales and sent it on for sale to this house."

*Q.* "It was sold and returns forwarded?"

A. "My name wasn't used at all, though it was done under my direction."

. . . . . .

274 Q. "What was the number of this claim on the records of the office?"

A. "I couldn't tell without looking at the papers."

Q. "Here is a copy of your letter to Mr. Knight."

A. "Thirty-eight sixty-two, of '81."

. . . . . .

441 "Know all men by these presents, That we, the Wabash, St. Louis & Pacific Railway Company as principal, and Charles Ridgely as surety, are held and firmly bound unto John F. Knox in the penal sum of Ten Thousand Dollars for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 9th day of July, in the year of our Lord One Thousand Eight Hundred and Eighty-three.

The condition of the above obligation is such that, Whereas, the said John F. Knox did, on the fifth day of March, A. D. 1883, at a term of the Circuit Court of the United States, holden within and for the Southern District of Illinois, ob-
442 tain a judgment against the above bounden Wabash, St. Louis & Pacific Railway Company for the sum of Five Thousand Two Hundred Thirty-seven and Fifteen-hundredths Dollars and costs of suit, taxed at Three Hundred and Sixty-four and Sixty-five-hundredths Dollars, from which judgment of the Circuit Court of the United States aforesaid, the said Wabash, St. Louis & Pacific Railway Company has prayed for and obtained a writ of error. Now, if the said Wabash, St. Louis & Pacific Railway Company shall duly prosecute said

writ of error, and shall moreover pay the amount of the judgment cost, interest, and damages rendered, and to be rendered, against the said Wabash, St. Louis & Pacific Railway Company in case the said judgment shall be affirmed, then the above obligation, to be null and void, otherwise to remain in full force and virtue.

IN TESTIMONY whereof, the said Wab ash, St. Louis & Pacific Railway has caused its corporate name and seal to be hereunto subscribed and affixed by its secretary, and the said Charles Ridgely security, has also subscribed his name and affixed his seal hereto.

L. S.

WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY.
By JAMES F. HOW, Secretary.
CHARLES RIDGELY. [SEAL.

Approved July 18th, 1883.
S. H. TREAT, District Judge."

OFFICE SUPREME COURT U. S.
FILED
JAN 15 1884
JAMES H. McKENNEY, CLERK

1136

IN THE

# Supreme Court of the United States.

## October Term, A. D 1883.

*No. 1136.*

Error to the Circuit Court for the Southern District of Illinois

WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY,

vs

JOHN F. KNOX.

*Motion to Dismiss Writ and Affirm Judgment.*

V. WARNER,
*ATTORNEY FOR DEFENDANT IN ERROR.*

SPRINGFIELD:
ILLINOIS STATE JOURNAL PRINT,
1883.

IN THE

# Supreme Court of the United States

OCTOBER TERM. A. D. 1883.

**No. 1136.**

Error to the Circuit Court for the Southern District of Illinois.

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WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY,

*vs.*

JOHN F. KNOX.

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***Motion to Dismiss Writ and Affirm Judgment.***

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COPY OF MOTION AND STATEMENT.

And now comes the defendant in the above entitled cause, by V. Warner his attorney, and, limiting his appearance to the purpose of this motion, moves the court to dismiss the writ and affirm the judgment herein, for the following reasons, viz:

I.

The matter in dispute does not exceed the sum or value of five thousand dollars, exclusive of costs.

Railway Company in case the said judgment shall be affirmed," when it should provide that the plaintiff in error should prosecute its writ to effect, and, if it fail to make its plea good, answer all damages and costs.

*Hoare* v. *Harris*, 14 Ill. 35.
*Stephens* v. *The People*, 13 Ill. 131.

It seems to me that *Tintsman* v. *National Bank*, 100 U. S. 6 is decisive of the motion to dismiss the writ, and that an argument in support of the points above made is unnecessary.

The record shows (pages 49, 50, 277, 278 & 279,) that the plaintiff in error admitted before the commencement of the suit that the defendant in error was justly entitled to recover, on account of the consignment, $727.42 and that it deposited that amount as a tender in the court below (pages 43 & 44). The judgment is for $5237.15 and the actual amount in dispute is the difference between the amount admitted to be due and the amount of the judgment—$4509.73, which is less than the amount necessary to give this court jurisdiction.

That the plaintiff in error was permitted to withdraw his tender, "without prejudice," after judgment, is immaterial, the "without prejudice" saved whatever advantage the tender gave either party.

The bond does not give the defendant in error the security for the payment of his judgment, in the event the case is not prosecuted to an affirmance, that the statute requires, and it is therefore insufficient.

I can not think that the plaintiff in error was not advised at the time it sued out this writ that this court could not entertain jurisdiction, or that it did not prosecute the writ for the purpose of obtaining delay only. The judgment was entered March 5, 1883, and the writ was sued out July 18, 1883.

Under the circumstances I submit that the court should not only dismiss the writ but affirm the judgment, of the court below.

Respectfully,

V. WARNER,
*Attorney for Defendant in Error.*

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IN THE

# SUPREME COURT

OF THE

# UNITED STATES

October Term, A. D. 1883.

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WABASH, ST. LOUIS & PACIFIC RY. CO., *Plaintiff in Error,*

vs.

JOHN F. KNOX, *Defendant in Error.*

} Error to Circuit Court, Southern Dist. of Ills.

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**Brief of Plaintiff in Error on Motion to Dismiss Writ of Error.**

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WILLIAM BROWN,
EDWARD P. KIRBY,
HENRY S. GREENE,

} Attorneys for Pltff. in Error.

Illinois Courier Steam Printing House, Jacksonville, Ill.

IN THE

# SUPREME COURT

OF THE

# UNITED STATES

## October Term, A. D. 1883.

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WABASH, ST. LOUIS & PACIFIC RY. CO., *Plaintiff in Error,*

vs.

JOHN F. KNOX, *Defendant in Error.*

Error to Circuit Court, Southern Dist. of Ills.

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**Brief of Plaintiff in Error on Motion to Dismiss Writ of Error.**

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MAY IT PLEASE THE COURT:

The defendant in error predicates his motion to dismiss the writ of error on two grounds, viz:

1. The matter in dispute does not exceed the sum or value of $5,000, exclusive of costs.

2. The bond is not conditioned according to law.

I.

*The relation of the parties and the sum in controversy, at the commencement of the action; "the amount claimed in the body of*

*the declaration;*" "*as to the defendant the amount of the judgment;*" *the amount* "*in dispute in the writ of error;*" "*when the general issue is pleaded the debt claimed,*" *are the criteria by which the jurisdiction is to be determined.*

In support of his motion to dismiss the writ of error, defendant in error says:

"The amount of judgment recovered is.....$5,237.15
Plaintiff admitted to be due, and tendered..... 727.42
Amount actually in dispute.....$4,509.73."

The conclusion arrived at is, that in the particular action the sum or value in actual dispute was less than $5,000, and consequently this court has not appellate jurisdiction.

The question is not what result a statement of account of all matters betwixt the parties might show, but what is the sum or value in actual dispute in this proceeding. Neither is it a question whether in a proceeding for money had and received the defendant in error could successfully defend as to the sum of $727.42. It might be that a party would have no defense whatever to a demand, yet in the exercise of his legal rights, if a judgment of over $5,000.00 should be rendered against him in a federal court, he could prosecute his writ of error and demand the judgment of this court on the question as to whether judgment had been legally rendered against him.

The word "*dispute,*" as used in statutes and decisions, is synonymous with the term "*issue.*" One may not be able to "*dispute*" in the sense of testify against a demand, and may yet "*dispute*" it, the legal sense, by putting it in issue, and may thus stand upon his legal rights and resist even into this court any judgment as such demand, and whilst never denying as a witness the just-

ness of the demand might "dispute" the methods and sufficiency of the proceedings by which a judgment against him was rendered.

There seems to us to be a conflict between the decision in *Tinstman vs. Nat. Bank*, *100 U. S.*, *6*, and the other cases involving this jurisdictional question, and it is believed it has arisen because of the want of a proper interpretation of the word "dispute" as used in the statute. This word was intended to be used as the synonym of "issue" or "controversy," and when the general issue is pleaded to a declaration every demand or claim of the plaintiff is, in legal contemplation, put in "issue," in "controversy," and in legal "dispute." This construction brings all of the long line of decisions of this court into harmony on this question, and would relieve the court from the necessity of repeated rulings thereon. As we have heretofore said, we insist that the defendant in any proceeding against him may controvert the methods by which it is sought to reduce the demand against him to a judgment, and when he interposes his plea of the general issue every material allegation is in "issue," in "controversy," and is, in law, in "dispute." So long as any obstacle is presented to a judgment there is a "dispute," otherwise a judgment could at once be taken as confessed and execution had. In the *Tinstman* case there was a submission on an agreed state of facts, and it does not appear that there was any "issue," "controversy" or "dispute" formed by the pleadings. If that was the basis of discussion the case is brought substantially in harmony with the former cases, otherwise there is a conflict in which we think the former stands upon the stronger basis of reason.

There are seven counts in the original and amended declarations, and in each of which the indebtedness is laid at ten thousand

dollars, and the *ad damnum* is laid in both writ and declaration at the sum of $10,000.

In this proceeding plaintiff in error has persistently denied that it was indebted to defendant in error in any sum whatever, and does now reiterate its denial, and yet a judgment is rendered against it in the sum of $5,237.15, exclusive of the costs. This sum stands between the parties, one endeavoring to enforce its payment, and the other resisting by the methods of the law. This would seem, at least, to be in issue and dispute.

Defendant in error cites as supporting his position,

Tintsman vs. Nat. Bank, 100 U. S., 6.

Gray vs. Blanchard, 97 U. S., 564,

Elgin vs. Marshall, 106 U. S. 578.

Neither of the cases is analagous to the one at bar.

In *Gray vs. Blanchard* the writ of error was prosecuted to reverse a judgment for $1,118.71. Of it the court says "*prima facie*, this is the measure of our jurisdiction in favor of the present plaintiff in error;" and in his application for removal of the cause from the state court, the plaintiff in error had affirmed that the matter in dispute was of the "*value of* $2,000." The court refering to *Lee vs. Watson* (1 Wall., 337) says it was held, "in an action upon a money demand where the general issue is pleaded, the matter in dispute is the debt claimed; and its amount as stated in the body of the declaration * * * * must be considered in determining whether this court can take jurisdiction."

In *Tintsman vs. National Bank* the suit was for $8,233.79 and dismissing the writ of error the court says: "The defendant admitted that he owed of this amount $5,099.59, *for which the*

*plaintiff was entitled to judgment.*" So far as the report shows there was no general issue pleaded, and the case was heard on an agreed statement of facts, which makes a case widely different from the one at bar, where every material allegation of the declaration was put in issue.

In *Elgin vs. Marshall* the writ of error was prosecuted to reverse a judgment for the amount of $1,660.75. The principal question in that case was whether the circumstance that the judgment upon the matter, actually the subject of litigation, might conclude the parties as to other rights which were of a greater value than $5,000, could be considered in the determination of the question of jurisdiction. The court held that the sum or value of the subject matter then in actual litigation was the sole criterion, and said: "It is not the actual value of the judgment sought to be reviewed which confers jurisdiction, otherwise it might be required to hear evidence that it could not be collected; *but it is the nominal or apparent sum or value of the subject matter of the judgment.*"

From this review of the cases which are the dependence of defendant in error to procure a dismissal of the writ, so wide a difference is found between them and the case at bar, that they cannot be said to control it.

The principles announced in those cases may be summarized to be:

The judgment is "*prima facie* the measure of our jurisdiction."

"Upon a money demand when the general issue is pleaded, the matter in dispute is the debt claimed."

The criterion of jurisdiction "is the nominal or apparent sum or value of the subject matter of the judgment."

According to the standard of these cases the jurisdiction of this court is obvious from the record here.

The attention of the court is respectfully invited to the following authorities which illustrate the principles upon which the "sum or value in dispute" is determined.

The fact that some of them were decided before the present standard of jurisdiction was adopted is not important; since the only change of the law is as to the amount, the language with that exception remaining the same.

In Wilson vs. Daniel, (3d Dallas, 401,) Chief Justice Elsworth speaking for the court says: "To ascertain then the matter in dispute, we must recur to the foundation of the original controversy, to the matter in dispute when the action was instituted. The descriptive words of the law point emphatically to this criterion; and in common understanding the thing demanded, and not the thing found, constitutes the matter in dispute between the parties."

As a reason for this criterion, the court says that upon the other construction where a judgment for less that $2,000.00, the limit at that time, was rendered, the defendent would be concluded, whereas the plaintiff being governed only by his demand, would have the right of removal and revision. "It is not to be presumed that the legislature intended to give any party such an advantage over his antagonist, and it ought to be avoided, as it may be avoided, by the reasonable and fair interpretation, which has been pronounced."

Mr. Justice Iredell dissenting says: "But the matter in dispute here meant is the matter in dispute on the writ of error." * * * "The writ of error is of the nature of a new suit."

Mr. Justice Chase, giving his reasons for concurrence, says: "I think that the amount rendered by the judgment would be found in the far greater number of cases to be the true rule." In actions of tort "the damages laid in the declaration afford the only practicable test of the value of the controversy."

In Connolly et al. vs. Taylor et al., 1 Peters, 556, the court says: "A jurisdiction depending on the condition of the party is governed by that condition as it was at the commencement of the suit."

In *Gordon et al. vs. Ogden*, 3rd Peters, 33, the court, speaking through Chief Justice Marshall, says: "This court has jurisdiction over final judgments and decrees of the circuit court where the matter in dispute excedes the sum or value of two thousand dollars. The jurisdiction of the court has been supposed to depend on the *sum or value of the matter in dispute in this court*, not what was in dispute in the circuit court." And citing *Cook vs. Woodrow*, 5 Cranch, 13, says. "If the judgment below be for plaintiff, that judgment ascertains the value of the matter in dispute." The same criterion was adopted in *Wise et al. vs. The Columbian Turnpike Co.*, 7 Cranch, 276, and in *Smith vs. Honey*, 3 Peters 469.

In Cooke vs. United States, 2 Wall., 218, it was held when a judgment had been obtained for $3,796.80, a remission of the amount to $1,296.80 did not take away the jurisdiction, and that "had the alleged reduction been made by actual payment the jurisdiction of the court would not be taken away."

In *Walker vs. United States, 4 Wallace, 163*, the decision is precisely in point and should be controlling of this motion: "It has long been settled, however, that when the judgment is for the

defendant or the plaintiff, and for less than $2,000, and the *plaintiff* sues out the writ of error, this court has jurisdiction if the damages claimed in the declaration exceed that sum; but that if the judgment is for plaintiff and not more than $2,000, and the defendant prosecutes in error, this court has not jurisdiction, *for the amount in controversy as to the defendant is fixed by the judgment.*"

In *Shaker vs. Hartford Fire Ins. Co., 93 U. S., 241,* the chief justice, rendering the opinion of the court, and citing *Lee vs. Watson,* 1 Wall., 337, says: "In an action upon a money demand when the general issue is pleaded, the matter in dispute is the debt claimed, and its amount as stated in the body of the declaration, and not merely the damages alleged or the prayer for judgment at its conclusion must be considered in determining whether this court can take jurisdiction." And the court declares this rule to be "clearly right" and applied it to the principal case and dismissed the writ of error because the declaration was on a $1,400 policy and the judgment could have been for no more.

Every one of the conditions essential to the jurisdiction of this court according to the principles of this long line of decisions, exist in the present case. Every count of the declaration is upon a money demand, and claims more than $5,000 exclusive of costs; the general issue was pleaded to each, and the result of the dispute is a judgment against plaintiff in error, defendant below, for $5,237.15. Consequently whether the court adheres to "the claim in the body of the declaration" or to "the judgment" as the criterion of the sum in dispute under the statute this writ of error is properly prosecuted.

The tender made in this cause below can cut no figure in the determination of the case. It was not accepted, and was, by

agreement of parties, withdrawn by the leave of the court, and that without prejudice to the rights of the party before this writ of error was sued out.

The following is the exact language of the order: "By agreement of the parties by their counsel it is ordered by the court that the defendant have leave to withdraw the amount brought into court without prejudice."

Counsel for defendant in error is not justified in characterizing this prosecution as "frivolous," and "as taken for delay." The writ is sued out in good faith and in the belief, though it may be mistaken, that there is error in the record, and that such error has resulted in a most unjust judgment against plaintiff in error.

As to the point that the bond is not conditioned according to law, but little need be said. Although the condition is not in the exact language of the statute, it is sufficiently broad to comprehend all of its requirements. The objection to the bond is not well taken for the purposes of dismissal of the writ, for if it is not strictly in compliance with the statute, this court will give the privilege and allow sufficient time to file a good one.

Anson Bangs & Co. vs. Blue Ridge Railroad Co., 23 How., 1.

Seymour vs. Freer, 5 Wall., 822.

Rubber Co. vs. Goodyear, 6 Wall., 153.

It is not believed that the law requires the language of the statute to be strictly followed, and being sufficiently broad to cover all demands of the statute it is in substantial compliance with the law and therefore sufficient.

The motion to dismiss for want of exact language of the

statute in the bond serves, however, to illustrate how little of confidence cousel has in his main proposition, that the court has not jurisdiction.

Should the court be of opinion that there should be a new bond given, we respectfully ask leave to do so, and that a reasonable time, considering the location of the parties, be given to that end.

Respectfully submitted,

WILLIAM BROWN,
EDWARD P. KIRBY,
HENRY S. GREENE,
} Attorneys for Pltff. in Error.